* **HIGH COURT OF DELHI : NEW DELHI**

Date of reserve : September 12, 2007
Date of decision: October 4th, 2007

\+ **W.P. (C) No. 83/2001**

% O.P. Gupta ...Petitioner
Through: Mr. U. Srivastava, Advocate

versus

Union of India & Others ...Respondents
Through: Ms. Geetanjali Mohan with Ms. Preetika Dwivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J

1. The Petitioner is aggrieved by the order dated 8th February 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (hereinafter referred to as the `Tribunal') in O.A. No. 964/1996 and the order dated 27.11.2000 passed in RA No.89/2000 filed in the aforesaid O.A. By these orders, the OA and the RA respectively filed by the petitioner

were dismissed by the Tribunal.

2. The Petitioner was earlier engaged as a casual labourer in October 1975 and was regularized as a B.M. Khalasi on 3.4.1980 in the Grade 196-232. After being transferred to Railway Electrification Organization on 8.12.1980, he was promoted on ad-hoc basis as clerk on 11.5.1983. He was further given ad-hoc promotion on the basis of seniority to the post of Senior Clerk on 16.5.1986. The Petitioner sought regularization of his service as a clerk but his representations did not bear fruit. Consequently, he filed O.A. No. 964/1996 before the Tribunal seeking regularization as a clerk from the date of his ad-hoc promotion, i.e. from 11.5.1983. The Tribunal dismissed the said OA by a short order on 8.2.2000. Paragraph 3 to 5 of the said order reads as follows:

> "3. Applicant has not denied in rejoinder, the specific averment of Respondents in their reply that applicant was appointed as a Khalasi in Mech. Engineering Deptt. And was transferred to Railway Electrification Project Organization, New Delhi on 26.12.1980 and was promoted in REP Organization against an ex-cadre post of clerk (Rs.260-400) on ad hoc basis on 11.5.1983.
>
> 4. Applicant has no enforceable legal right to compel Respondents to regularize him against an ex-cadre post outside his own channel of promotion even if he has been working against that post on ad hoc basis since long.
>
> 5. Northern Railway letter dated 18.2.97

> (Ann-III) does not help applicant's case as it refers to eligible Group 'D' Staff (emphasis supplied). No rule or instruction has been shown by applicant to establish that an employee of ME Department is eligible for regularization as a Clerk in REP Organization merely because he has been working against the post of clerk on ad hoc basis in that organization since long."

3. Thereafter the Petitioner preferred the aforesaid review application which has been dismissed by the Tribunal by holding that the order does not require any review.

4. The Respondents have filed counter affidavit in opposition to the Petition. The stand of the Respondents is that the Petitioner was appointed as substituted Boiler Maker Khalasi in the scale of 196-232 for Loco Shed in Moradabad on 4.4.1990; that he is a unscreened Khalasi belonging to the mechanical Engineering Department; he was transferred to Railway Electrification Project Organization, New Delhi on 26.12.1980 where he was promoted against an ex-cadre post of clerk in the Grade of 260-400 on 11.5.1985 purely on ad hoc basis. The Respondent further states that the Petitioner has no legal right of regularization as clerk on Moradabad Division, as he is an unscreened substitute BM Khalasi. The Respondents further aver that he is not eligible for promotion as clerk by virtue of his position in his parent department in terms of the recruitment

rules. According to para 174(b) of the Indian Railway Establishment Manual, Vol. I, Group 'D' Staff working as Office Khalasi, Office Peon, Messenger, etc are eligible for promotion as clerks against the promotion quota by selection. The Petitioner has no enforceable legal right to seek regularization as a clerk against an ex cadre post outside his own channel of promotion merely because he is working in that post on ad-hoc basis since long. The Petitioner is not even regularized in Group 'D' category within his own cadre. He would need to be first regularized in his turn in Group 'D' category in his own cadre before being considered for regular promotion in Group 'C' category.

5. The Petitioner places reliance on the decision of the Tribunal on O.A. No. 1395/1992 and in other cases decided by the Tribunal. In O.A. No. 1395/1992, the applicants sought regularization as Material Checking Clerk (MCC)/Clerk from the date they were working on ad hoc basis. The said OA was allowed by the Tribunal directing regularization of the Petitioners therein.

6. We find no merit in the petition filed by the Petitioner, not only for the reasons recorded by the Tribunal that the promotion on ad-hoc basis granted to the Petitioner was in the RAP Organization against an ex cadre post of clerk, and that he cold not seek regularization against an ex-cadre post outside his

own channel of promotion, but also for the reason that the same would be contrary to the law laid down by the Hon'ble Supreme Court in ***State of Karnataka vs. Uma Devi***, 2006 4 SCC 1. The ad hoc appointment as a clerk granted to the Petitioner was not preceded by a due process of selection for recruitment to a permanent post in compliance of the recruitment rules. In such circumstances there is no question of the incumbent seeking regularization to the post occupied by him for some length of time. The decision cited, apart from not being a binding precedent on this Court, is also in the teeth of the aforesaid decision of the Supreme Court.

7. We accordingly find no merit in this petition and dismiss the same.

No costs.

VIPIN SANGHI, J.

A.K. SIKRI, J.

October 4th, 2007
P.K. BABBAR